

REMARKS

Upon review of the file, it was noted that the initialed Form PTO-1449 filed with the Information Disclosure Statement dated March 4, 2010 has not been received. It is requested that the Examiner initial the Form PTO-1449, and return it to the undersigned attorney.

Amendments

Claim 58 has been amended to specify that the barrier layer is adhered to the exterior surface of one or more of the walls of the container. Support for this amendment can be found at e.g., Page 7, line 27 – Page 8, line 2; FIG. 2b with its accompanying description at Page 15, line 17 – Page 17, line 26; and claim 70.

Claims 71 and 72 have been amended to depend from claim 1 rather than claim 70.

Claims 75 and 76 have been amended to depend only from claim 58, deleting their dependence from now-canceled claim 73.

Claim 81 has been amended from independent form to be dependent from claim 58.

Claim 89 has been amended from independent form to be dependent from claim 58.

Please cancel claims 70 and 73-75.

§ 103 Rejections

Claims 58-60, 62-70, 72, 76, 77, 81, 83-89 and 91-96 are rejected under 35 USC § 103(a) as being unpatentable over Crosby et al. (U.S. Publication 2002/0076258) in view of Petterson et al. (PCT Publication WO/9903677).

Independent claim 58 requires, in part, “A skin antiseptic composition dispenser comprising: a container defining an interior volume, wherein the container comprises one or more polymeric walls free of metallic foil layers; ... and wherein the container further comprises at least one barrier layer that is substantially impermeable to gaseous ethylene oxide” The Examiner appears to take the position that the single polyester layer described in Crosby discloses both the “one or more polymeric walls free of metallic foil layers” and the “at least one barrier layer” of claim 58.

Without conceding that the Examiner’s application of Crosby is correct, Applicants have amended claim 58 to specify that the barrier layer is a separate element “adhered to” at least one

of the “polymeric walls.” Applicants respectfully submit that the Patent Office has failed to show how Crosby describes, teaches, or suggests such a combination of both a polymeric wall and a separate barrier layer.

Previous claim 70 was also rejected over Crosby in view of Petterson. With respect to claim 70, the Patent Office stated: “Crosby discloses that the layers are integral to container 20 and thus do not disclose that the layer is substantially impermeable to ethylene oxide is a barrier layer adhered to at least a portion of the exterior of the container.” (Final Office Action dated 11-March-10, “FOA”). Thus, Applicants respectfully submit that the Patent Office has acknowledged that Crosby fails to describe claim 58 as amended. Applicants further submit that the Patent Office has failed to show how Petterson overcomes this deficiency in Crosby.

For at least this reason, the rejection of independent claim 58 under 35 USC § 103(a) as being unpatentable over Crosby et al. (U.S. Publication 2002/0076258) in view of Petterson et al. (PCT Publication WO/9903677) has been overcome and should be withdrawn.

Following the entry of the amendments to formerly independent claims 81 and 89, Claims 58-60, 62-69, 72, 76, 77, 81, 83-89 and 91-96 each depends, directly or indirectly from claim 58 and adds patentable features thereto. Claim 58 is patentable over Crosby in view of Petterson for at least the reasons stated above; thus, claims 58-60, 62-69, 72, 76, 77, 81, 83-89 and 91-96 are likewise patentable.

Claim 61 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Crosby (‘258) in view of Petterson et al. (‘677) as applied to claim 58 above and further in view of Fendler et al. (U.S. Patent No. 6,333,039).

Claims 61 depends, directly or indirectly from claim 58 and adds patentable features thereto. Claim 58 is patentable over Crosby in view of Peterson for at least the reasons stated above. The Patent Office has failed to show how Fendler overcomes the deficiencies of Crosby and Petterson; thus, 61 is likewise patentable.

Claims 71 and 73-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crosby (‘258) in view of Petterson et al. (‘677) as applied to claim 58 above and further in view of Langley (U.S. Patent No. 5,560,974).

Claims 73-75 have been canceled, rendering the rejection of those claims moot.

The invention of Langley relates to “breathable non-woven composite barrier fabrics which are impervious to water-based liquids such as bodily fluids but which allow the passage of water vapor.” According to Langley, “Applications for such fabrics exist in the field of protective garments....” ((Col. 1, lines 14-24.)

In contrast, the present claims are directed to a skin antiseptic composition dispenser containing a skin antiseptic composition. The container is impermeable to liquid and vapor phases of the skin antiseptic composition; and substantially impermeable to ethylene oxide. (See, e.g., claims 58 and 71.)

At the outset, Langley is clearly nonanalogous art. Improved protective garments bear no relationship to skin antiseptic composition dispensers. Applicants respectfully submit that the Patent Office’s assertion that “the prior art of Langley seems to solve a similar problem in the art to that which applicant is concerned” (FOA, page 16) is incorrect. Clearly, the problems of (1) breathable non-woven composite barrier fabrics which are impervious to water-based liquids such as bodily fluids but which allow the passage of water vapor and (2) containers impermeable to liquid and vapor phases of a skin antiseptic composition; and substantially impermeable to ethylene oxide are so unrelated that one of ordinary skill in the art addressing the latter would never consider solutions provided for the former. For example, a solution designed to permit the passage of water vapor would be immediately rejected by one of ordinary skill in the art seeking to provide a container substantially impervious to ethylene oxide.

According to the Patent Office, Langley discloses the use of PET and concludes that “Langley discloses a material identical to one disclosed by applicant for the ethylene oxide barrier.” (FOA, page 16.) However, this conclusion ignores the fact that Langley describes a breathable non-woven fabric “wherein a non-woven web layer is adhesively bonded to a microporous film” (Col. 1, lines 24-46.) Applicants maintain their position that not all PET films are substantially impervious to ethylene oxide. However, any disagreement over that point notwithstanding, there can be no dispute that the non-woven web layer and the microporous films disclosed by Langley are permeable to ethylene oxide regardless of the material from which they are constructed. Thus, such materials would not be considered by one seeking to provide a barrier layer substantially impervious to ethylene oxide.

For at least these reasons, the Patent office's reliance on Langley is factually and legally improper and the rejection of claim 71 should be withdrawn.

Claims 78, 79, 82 and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crosby (258) in view of Petterson et al. ('677) as applied to claims 58 and 81 above, and further in view of Hoang et al. (U.S. Patent No. 5,607,699).

Claims 78, 79, 82 and 90 depend, directly or indirectly from claim 58 and add patentable features thereto. Claim 58 is patentable over Crosby in view of Peterson for at least the reasons stated above. The Patent Office relied on Hoang for its purported teachings related to the skin antiseptic composition. The Patent Office has failed to show how Hoang overcomes the deficiencies of Crosby and Petterson described above; thus, claims 78, 79, 82 and 90 are likewise patentable.

Claim 80 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crosby ('258) in view of Petterson et al. ('677) as applied to claim 58 above, and further in view of Behrends et al. (U.S. Publication 2001/0036963).

Claim 80 depends, directly or indirectly from claim 58 and add patentable features thereto. Claim 58 is patentable over Crosby in view of Peterson for at least the reasons stated above. The Patent Office relied on Behrends for its purported teachings related to the skin antiseptic composition. The Patent Office has failed to show how Behrends overcomes the deficiencies of Crosby and Petterson described above; thus, claims 78, 79, 82 and 90 are likewise patentable.

In view of the remarks presented herein, Applicants respectfully submit that the claims are in condition for allowance.

Applicants request that the Examiner telephone the undersigned agent of record in the event a telephone discussion would be helpful in advancing the prosecution of the present application.

Respectfully submitted,

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Date

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